

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

FILED

MAY - 3 2006

WILLIAM B. GUTHRIE
Clerk, U.S. DISTRICT COURT

By _____
Deputy Clerk

JOHN HADLEY FISHER; and,
KENNETH LYNN FUNKHOUSER,
Plaintiffs,

V.

CASE NO. CIV 05-266-FHS

OKLAHOMA DEPARTMENT OF CORRECTIONS
UNKNOWN STATE ACTOR and, or ACTORS, et al.,
Defendants.

PLAINTIFFS' MOTION FOR LEAVE OF COURT TO SUBMIT SUPPLEMENTAL PLEADINGS

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure and EDOK Local Civil Rule 7.1(C)(4), Plaintiffs respectfully seek permission of the Court to submit Supplemental Pleadings in the form of Plaintiffs' SUPPLEMENT TO AMENDED COMPLAINT setting forth transactions, occurrences and events which have happened since the date Plaintiffs' AMENDED COMPLAINT (doc. entry 22) was filed within this Court on September 27, 2005, and to the present, to which materially effectuates and has a direct and ongoing impact upon this action. In direct relation the Tenth Circuit has held:

"The existence of an improper motive for disciplining a prisoner which results in interference with a constitutional right also may give rise to a second and separate cause of action under section 1983 . . . Prison officials may not retaliate against or harass an inmate because of the inmate's exercise of his right of access to the courts . . . This principle applies even where the action taken in retaliation would be otherwise permissible. '[I]t is well established that an act in retaliation for the exercise of a constitutionally protected right is actionable under [42 U.S.C.] Section 1983 even if the act, when taken for a different reason, would have been proper.'" Smith v. Maschner, 899 F.2d 940, 947-48 (10th Cir. 1990).

The original and two copies of said SUPPLEMENT TO AMENDED COMPLAINT and BRIEF IN SUPPORT OF SUPPLEMENT TO AMENDED COMPLAINT are submitted herewith for the Court's consideration.

WHEREFORE, Plaintiffs pray the Court grant their PLAINTIFFS' MOTION FOR LEAVE OF COURT TO SUBMIT SUPPLEMENTAL PLEADINGS in the interest of justice, and as a matter of judicial discretion.

Respectfully submitted,

John Hadley Fisher
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Kenneth Lynn Funkhouser
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PLAINTIFFS' MOTION FOR LEAVE OF COURT TO SUBMIT SUPPLEMENTAL PLEADINGS was mailed first-class postage prepaid on this 1st day of May, 2006, to:

Ronald A. Anderson
Assistant General Counsel
Oklahoma Department of Corrections
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Oklahoma City, OK. 73136

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